



(Bill No. 2172)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City of Philadelphia, to enter into Agreements with the Townships of Abington, Cheltenham, Lower Merion, Springfield and Lower Moreland in Montgomery County; the Lower Southampton Municipal Authority, the Bensalem Township Authority; the Bucks County Water and Sewer Authority; the Township of Upper Darby, Delaware County; the Delaware County Regional Water Quality Control Authority; and other municipalities, townships and authorities outside the limits of the City, to provide wastewater treatment service to the aforementioned, under certain terms and conditions.

WHEREAS, The Agreements authorized hereby shall be for the purpose of replacing existing Agreements and amendments thereto for the receipt, conveyance, treatment and disposal of wastewater and its by-products from the above mentioned Townships and Authorities, and for the purpose of entering into new agreements with other municipalities, townships or authorities outside the limits of the City; and

WHEREAS, Said Agreements shall be prepared in compliance with current Federal, State and local laws and regulations, and EPA Regulations and other applicable law; therefore,

The Council of the City of Philadelphia hereby ordains:

SECTION 1. The Water Commissioner, on behalf of the City of Philadelphia, is hereby authorized to enter into Agreements in accordance with Section 5-802 of the Phila-

delphia Home Rule Charter, with municipalities, townships and authorities outside the limits of the City which Agreements shall provide substantially as follows:

This Agreement, made this day of , 19 , A.D. by and between the City of Philadelphia, party of the first part, hereinafter called "City" and party of the second part, hereinafter called "Municipality, Township or Authority".

WITNESSETH:

WHEREAS, The City owns and operates wastewater collection and treatment facilities which have a limited capacity to convey, scientifically treat and properly dispose of wastewater and its by-products collected from outlying municipalities in addition to wastewater originating within the City; and

WHEREAS, Expansion of the City's wastewater treatment facilities will enable the City to accommodate additional flows of wastewater; and

WHEREAS, It is necessary to comply with new higher standards and treatment methods for wastewater as set forth in Federal, State and local laws and regulations; and

WHEREAS, There are resultant by-products in the form of sludge in connection with all methods of wastewater treatment which must be disposed of; and

WHEREAS, City is now expanding and improving its wastewater collection and treatment facilities in accordance with orders, guidelines and regulations of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency (hereinafter referred to as "EPA"); and

WHEREAS, The City has entered into Federal Grant Agreements with the EPA under the Funding Arrangements provided in Federal Water Pollution Control Act Amendments

of 1972 (P.L. 92-500) as amended by the Clean Water Act of 1977 (P.L. 95-217), for the purpose of partially funding the expansion, improvement and rehabilitation of the City's wastewater collection and treatment system; and

WHEREAS, The City has Grant Applications pending and expects to apply to the EPA for additional grants in the future for the purpose of partially funding the expansion, upgrading and/or rehabilitation of the City's wastewater collection and treatment system; and

WHEREAS, The City is required to adhere to and abide by all Federal, State and local laws and EPA Rules and Regulations in order to retain Federal Grant Funding; and

WHEREAS, There are in existence Agreements and Amendments (hereinafter referred to solely as "Agreements") by and between the City and Municipality, Township or Authority through which the City has provided wastewater collection and treatment and sludge disposal services to Municipality, Township or Authority; and

WHEREAS, Said Federal Rules and Regulations apply to the entire Delaware and Schuylkill River tributary drainage areas which include outlying Municipalities, Townships, or Authorities served by the City's wastewater collection and treatment system; and

WHEREAS, In order to comply with Federal, State and local laws and regulations and EPA Rules and Regulations, the City and the outlying Municipalities, Townships or Authorities served by the City must conduct a sewer system evaluation survey and rehabilitation as required by EPA regulations and other applicable laws and also must implement a User Charge System and an Industrial Cost Recovery System and must coordinate with the City in their Pretreatment Program implementation of a Federal Facilities Cost Recovery Plan as required by EPA Regulations and Memoranda; and

WHEREAS, When the outlying Municipalities, Townships or Authorities are in compliance as set forth above, they may be eligible for reimbursement under the City's existing and future Grant Agreements for certain authorized eligible costs incurred by them for the said compliance; and

WHEREAS, The City and the Municipality, Township or Authority have now been charged by Federal and State mandates with the legal responsibility to restore and maintain the chemical, physical and biological integrity of our waters and water resources, and also to insure that to the fullest extent possible they prevent, reduce and eliminate pollution in said water resources, and to plan the development and use (including restoration, preservation and enhancement) of said waters and water resources, and to improve the purity of such waters; and

WHEREAS, The aforesaid conditions could not have been foreseen by the parties when the existing Agreements were originally executed and/or amended. Further, the aforesaid improvements and expansion of the City's present wastewater treatment facilities conditions are caused by Federal Pollution Control legislation, State and local government regulations and requirements. Further, changes in the population density, increases in the cost of money and increases in the cost of operating wastewater treatment plants have exacerbated this problem. The foregoing circumstances have caused extreme increases in the expense and changes in performance of Agreements by the City and have added restrictions and responsibilities upon both the City and Municipality, Township or Authority in regard to methods of wastewater collection and treatment and sludge disposal; and

WHEREAS, The provisions and conditions either stated or implied in the existing Agreements do not reflect the current fair share of costs which ought to be allocated to and borne by the Municipality, Township or Authority for the construction, operation and maintenance of the City's wastewater treatment facilities, which has caused the City

to subsidize that portion of the deficit resulting from improved treatment of the wastewater collected from the Municipality, Township or Authority, and has caused unreasonable increases in rates upon other users; and

WHEREAS, Performance of said existing Agreements is rendered impossible by the said laws and changes and it is necessary to empower the City to enter into new agreements to insure the proper restoration and efficient maintenance of the chemical, physical and biological integrity of our waters and waterways, and improve, restore, preserve and enhance the purity of such waters and waterways, and insure that applicable Federal, State and local laws and regulations, EPA Rules and Regulations are implemented in portions of any waterway tributary to the City's wastewater facilities, to determine fair and equitable cost and charge provisions to meet current and future conditions, and to supercede, repeal, revise and replace the above mentioned existing Agreements in order to comply with present laws and regulations in this said new Agreement; and

WHEREAS, There are other municipalities, townships or authorities outside the limits of the City that might not be in a position to furnish their residents with wastewater (sewage) disposal services.

Now, THEREFORE, It is mutually covenanted and agreed by and between the parties hereto as follows:

Except for services rendered and unpaid under existing Agreements, the City and Municipality, Township or Authority hereby concurrently release one another from any and all rights, privileges, responsibilities or liabilities, either stated or implied in all Agreements by and between the City and Municipality, Township or Authority for wastewater collection and treatment and sludge disposal, and hereby covenant and agree to enter into a new Agreement for wastewater collection and treatment and sludge disposal. Said Agreement shall be as follows:

ARTICLE 1

GOVERNMENT GRANTS, SUBSIDIES, PERMITS AND RELATED MATTERS

1.01. Applications

City may make application in conjunction with the Municipality, Township or Authority to the Commonwealth of Pennsylvania and to the United States of America and their appropriate agencies, for grants, subsidies or other payments and for all permits and approvals in respect of the planning, design, acquisition, construction, operation and maintenance of the expansion of City's Water Pollution Control Facilities. Further, the City may receive the proportionate share of Municipality's, Township's or Authority's grants, subsidies or other payments in respect of the construction, acquisition, operation and maintenance of the City water pollution control plants and appurtenant facilities. The Municipality, Township or Authority shall cooperate fully therein, to the extent of their respective interests in such individual projects.

1.02. Application of Grant Proceeds

After receipt by the City, City may reimburse to Municipality, Township or Authority the maximum allowable percentage of all authorized costs incurred by Municipality, Township or Authority in compliance with the provisions of this Agreement as provided for under existing applicable laws and grant agreements and deemed eligible by EPA for reimbursement under such existing laws and grant agreements.

All funds received by Municipality, Township or Authority from the City's existing and future Federal grant agreements are subject to Federal and City audit as to authenticity and eligibility of claims as required by laws and regulations.

1.03. Compliance with Laws and Regulations

The City and Municipality, Township or Authority shall comply with all applicable Federal, State and local laws and regulations as well as all EPA Rules and Regulations either now in existence or as may be imposed in the future. Municipality, Township or Authority further agrees to provide any reports, data, surveys or studies required by the City and/or appropriate Federal and States agencies. This may include but not be limited to data for construction grant requirements, National Pollutant Discharge Elimination System requirements, Sludge Disposal Permit requirements and industrial pretreatment requirements. The cost of such reports, data, surveys or studies is to be reimbursed to the Municipality, Township or Authority by the City to the extent of the funds obtained from Federal or State agencies for that purpose.

1.04 Compliance with Regulations and Laws

In order to comply with Federal, State and local laws and regulations and EPA Regulations and other applicable law:

(a) The City shall establish a system of charges to be applied to Municipality's, Township's or Authority's quantity and quality of wastewater which represents the Municipality's Township's or Authority's share of the costs of providing the wastewater collection and treatment, and sludge disposal services by the City to the Municipality, Township or Authority.

(b) In cooperation with the City, the Municipality, Township or Authority shall develop, adopt, implement and maintain a User Charge System which properly distributes the cost of serving each user or class of users in compliance with applicable law and EPA Regulations. Municipality, Township, or Authority shall provide evidence as required by all Federal and State regulatory bodies of the timely development of its User Charge System. Upon initiation of the User Charge System, the Municipality, Township or Authority shall maintain cur-

rent such records as are necessary to document continued user compliance. These records are to be available for periodic examination by the City by mutual arrangement.

(c) Municipality, Township or Authority agrees to develop, adopt, and implement a system for the collection, metering, sampling, retention and payment procedures of the Industrial Cost Recovery Charges in compliance with EPA rules and regulations and other applicable law where applicable; and Municipality, Township or Authority shall provide evidence as required by all regulatory bodies as well as the City of the timely development of its Industrial Cost Recovery System. Upon initiation of the Industrial Cost Recovery System, the Municipality, Township or Authority shall maintain such records as are necessary to demonstrate continued compliance. Such records are to be available for inspection by the City when requested.

(d) Municipality, Township or Authority in compliance with EPA rules and regulations, shall conduct a Sewer System Evaluation Analysis and Rehabilitation Program.

(e) Municipality, Township or Authority shall coordinate with the City implementation of a Federal Facilities Cost Recovery Plan as required by EPA regulations and Guidance Memoranda to recover those project costs allocated to the treatment of wastes from major activities of the Federal Government within outlying townships, municipalities, or authorities, where applicable.

(f) Failure by Municipality, Township or Authority to comply with any of the terms and conditions of the above provisions which may jeopardize EPA's approval or continuation of an existing or future grant agreement between the City and EPA shall, at the discretion of the City Water Commissioner, be deemed a violation of the above provisions. City retains the right to terminate in part or in whole any or all wastewater

services between Municipality, Township or Authority and the City as a result of violations of the above provisions; provided however, that the City shall first give Municipality, Township or Authority ninety (90) days notice in writing, by certified mail, of the violation or violations.

(g) All costs or penalties incurred by City because of termination and/or restoration of any and all wastewater services between the City and Municipality, Township or Authority, as a result of violations of the above provisions, shall be payable to the City by Municipality, Township or Authority within one hundred eighty (180) days, of such billing by the City. Penalties shall be added to the unpaid balance thereafter, at the rate of one and one-quarter percent ($1\frac{1}{4}\%$) per month.

ARTICLE 2

WASTEWATER CHARGES AND PAYMENTS

2.01. Wastewater Service

(a) Municipality, Township or Authority shall pay quarterly to the City a Wastewater Service Charge for the conveyance, treatment and disposal of its wastewater delivered to the City. The Wastewater Service Charge shall be determined in accordance with past and estimated future costs of conveying and treating wastewater and disposing of resultant sludge and shall include charges applicable in part to quantity and quality of the wastewater flow delivered by Municipality, Township or Authority, and in part to contractual capacities as set forth in Article 3, Section 3.02 hereof as well as the attached Addendum.

Said wastewater charges shall include but not be limited to: (1) depreciation and return on facilities; (2) costs of operation, maintenance, repairs, replacements and removals of the City's conveyance and treatment facilities; and (3)

appropriate shares of employee benefits, departmental overhead and other non-direct expenses.

2 [(b) City shall add to the Wastewater Service Charge a management fee equal to ten percent (10%) of the wastewater service charge.

(c) Wastewater Service Charges by the City shall be reviewed no less frequently than bi-annually, and said Wastewater Service Charges may be increased or decreased, if necessary.

(d) City will render billings to Municipality, Township or Authority on a quarterly basis. Any lump sum charges shall be pro-rated over the four quarters of the year. These billings shall be based upon actual quantity and quality and/or contractual capacities or, when necessary upon estimates thereof.

(e) Billings shall be payable to the City by Municipality, Township or Authority within thirty (30) days. Penalties shall be added to the unpaid balance thereafter, at a rate of one and one quarter percent ($1\frac{1}{4}\%$) per month.

(f) The City shall notify Municipality, Township or Authority of any change in rates at least ninety (90) days in advance of their becoming effective.

X (g) City wastewater charges for the conveyance, treatment and disposal of wastewater received from Municipality, Township or Authority, shall become effective retroactive to July 1, 1977.

2.02. Payment Bond

Municipality, Township or Authority shall, at the execution of the Agreement, furnish City its irrevocable bond in a sum equal to one and one-half ($1\frac{1}{2}$) times the annual estimated Wastewater Service Charge. The bond shall be conditioned on the faithful compliance by Municipality, Township or Authority with the provisions of this Agreement and also contain a confession of judgment clause.

The term of the bond shall commence from the date hereof and continue for the term of this Agreement and any renewals thereof.

ARTICLE 3

CONSTRUCTION, OPERATION AND MAINTENANCE OF MUNICIPALITY'S, TOWNSHIP'S OR AUTHORITY'S CONVEYANCE SYSTEM AND RELATED MATTERS

3.01. Design and Construction

The Municipality, Township or Authority shall design, construct, own, operate and repair at its sole cost and expense sanitary sewers and connections to the City system necessary to convey its wastewater to the City. The locations of approved points of connection and provisions concerning these connections are described in an Addendum attached hereto and made a part hereof.

No additional points of connection shall be made without prior written approval from the City Water Commissioner. If certain of Municipality's, Townships or Authority's connections are determined by the City or any governmental regulatory agency to be maintenance problems or sources of unauthorized discharges, the City shall have the right to notify Municipality, Township or Authority that such connection must be disconnected and relocated and Municipality, Township or Authority shall do so forthwith, at the sole expense of Municipality, Township or Authority.

3.02. Allowable Quantities

City shall also have the right to establish quantities, qualities and flow rates of wastewater received from Municipality, Township or Authority, specific details of which are included in the attached Addendum. In the event that Municipality, Township or Authority exceeds the quantities,

qualities or flow rates set forth in the attached Addendum, City shall have the right to impose any sanctions as set forth in Sections 1.04(f) and (g) as well as any other provision of this Agreement pertaining to wastewater charges and penalties.

3.03. Metering and Sampling

Plans and specifications for a chamber or chambers for metering and sampling shall be submitted to the City by Municipality, Township or Authority for approval. Upon approval by City, such chamber or chambers may be placed at each point of connection to the City system.

(a) Chambers shall include approved meters for measurements of wastewater quantities and telemetry equipment for transmitting flow data to a regional control center in the City. Chambers shall also be equipped with automatic sampling equipment.

(b) All chambers, equipment and installation thereof shall initially be at the sole cost of the Municipality, Township or Authority.

(c) City shall:

1. Record periodically the meter readings of wastewater flowing through said meters;

2. Periodically take wastewater samples for analyses; and

3. Perform the analysis of samples according to standard methods as prescribed in the current edition of "Standard Methods for the Examination of Water and Wastewater" published by American Public Health Association and the City's findings in such analysis shall be binding on both parties to this Agreement.

(d) Send flow data utilized in the billing to Municipality, Township or Authority with each billing.

The City will own all the aforesaid equipment, wherever located, and will inspect, calibrate, maintain and repair such meters and devices as part of its Operating Costs.

City shall estimate flow and quality conditions when accurate records are unavailable for any reason whatsoever.

The City shall have the option of approving the Municipality's, Township's or Authority's schedule for the installation of such equipment. Municipality, Township or Authority shall have a right to inspect meters and check calibration.

ARTICLE 4

EXPANSION, OPERATION AND MAINTENANCE OF CITY PLANTS AND RELATED MATTERS

4.01. Design, Construction, Operation and Maintenance of Water Pollution Control Plants

City will plan, design, and construct the expansion of City water pollution control plants and appurtenances and will thereafter operate, maintain, repair and improve such expanded plants pursuant to the guidelines of and with the cooperation of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency and other responsible governmental agencies.

ARTICLE 5

FUTURE SERVICE REQUIREMENTS, FUTURE EXPANSION AND RELATED MATTERS

5.01. Future Service Requirements and Related Matters

City and Municipality, Township or Authority shall, from time to time, review system performance and the City's and Municipality's, Township's or Authority's current and future requirements, both in terms of additional future flows of wastewater and higher standards of wastewater treat-

ment and disposal. Municipality, Township or Authority shall:

(a) pay their proportionate share of the total project costs of such expansion; and

(b) assist in financing of such project costs as directed by the City Water Commissioner.

ARTICLE 6

WASTEWATER QUALITY RESTRICTIONS

6.01. Uniform Standards

Municipality, Township or Authority shall adopt rules, regulations and resolutions governing sewer connections and the admission of wastewater into the sewers of Municipality, Township or Authority, which shall bar from the sewers of Municipality, Township or Authority such substances as are barred by the City from its sewers according to the Federal, State and local laws and regulations and EPA Rules and Regulations existent or adopted in the future.

Municipality, Township or Authority agrees to submit documentation to demonstrate enforcement and compliance with all appropriate rules and regulations and resolutions to City pursuant to City's National Pollutant Discharge Elimination System Permits and/or Sludge Disposal Permits.

6.02. Damages Due to Barred or Harmful Substances

Any costs or damages incurred by the City as a result of Municipality's, Township's or Authority's facilities not complying with Article 6, Section 6.01 shall be billed to Municipality, Township or Authority and shall be paid to the City by Municipality, Township or Authority within thirty (30) days of such billing by the City. Penalties shall be added to the unpaid balance thereafter, at the rate of one and one-quarter percent ($1\frac{1}{4}\%$) per month.

ARTICLE 7

SLUDGE DISPOSAL

7.01. Utilization of Wastewater Sludge Generated by City Facilities

Municipality, Township or Authority recognizes the importance and urgent need to utilize sludge in a timely and proper manner. Municipality, Township or Authority shall cooperate fully with City in any environmentally sound sludge utilization program meeting Federal and State standards within Municipality, Township or Authority.

ARTICLE 8

MISCELLANEOUS

8.01. Inspection and Audit

Complete records and accounts relating to each party's responsibilities under this Agreement shall be kept. Each party shall at all times have the right to examine and inspect said records and accounts and their physical facilities.

If required by any law or regulation, Municipality, Township or Authority shall make said records and accounts available to Federal and State grant auditors.

8.02. Arbitration of Dispute

If any dispute shall arise between the parties hereto, touching the terms, conditions and covenants of this Agreement the same shall be submitted to a Board of Arbitration. Three (3) arbitrators, one appointed by the Water Commissioner, one by the Municipality, Township or Authority, and the third to be agreed upon jointly by the Water Commissioner and Municipality, Township or Authority.

The arbitrators representing the Municipality, Township or Authority and City, shall be named within five (5) days from the request for the appointment of such Board. If after a period of ten (10) days from the date of the appointment, the two (2) arbitrators appointed by the City

and Municipality, Township or Authority cannot agree on the third arbitrator, then either appointed arbitrator may request the American Arbitration Association or its successor in function to furnish a list of three (3) members of said Association who are residents of Pennsylvania from which the third arbitrator shall be selected.

The arbitrator appointed by the Municipality, Township or Authority shall then eliminate one (1) name from the list furnished by the American Arbitration Association within five (5) days after its publication following which the arbitrator appointed by the City shall eliminate one (1) name from the list within five (5) days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as the Chairman of the Board of Arbitrators.

The Board of Arbitrators, thus established, shall commence the arbitration proceedings within ten (10) days after the third arbitrator is selected and shall make its determination within thirty (30) days after the appointment of the third arbitrator. The decision of such arbitrators shall be final and binding upon the parties.

8.03. Claims, Insurance and Related Matters

1. The Municipality, Township or Authority agrees to defend and/or join in defending and also indemnify City and save it harmless from and against all claims, actions, causes, suits, demands, losses, interest, penalties and liabilities pursuant to performance of this Agreement by reason of:

(a) The City's inability, due to causes beyond its control, to perform any of the provisions of this Agreement;

(b) Injury (including death) to persons and damages to property, resulting from any operations under this Agreement, whether due to the negligence of the City, Municipality, Township or Authority, its employees, servants or the inherent nature of said operations;

(c) EPA or Pennsylvania Department of Environmental Resources action of any kind whatsoever, direct or indirect; for any work undertaken by Municipality, Township or Authority, its contractors or consultants, necessary and required by this Agreement due to rejection of said work by the EPA or Pennsylvania Department of Environmental Resources;

(d) Any grant fund, or any portion thereof, received by Municipality, Township or Authority and later determined to be ineligible for reimbursement by the appropriate regulatory agency or grant auditors.

2. Nothing hereinabove set forth shall limit or debar the City from resorting to any appropriate remedy in law or equity, or any combination or remedies for non-Compliance with Section 8.03 of this Agreement.

8.04. No Transfer of Rights

No provisions of this Agreement shall be deemed to:

1. Confer upon any third person any right against Municipality, Township or Authority or City or to authorize any such third person to institute any suit against Municipality, Township or Authority or the City.

2. Permit or authorize the Municipality, Township or Authority to confer, transfer, convey, assign, or license any third party any rights obtained under this Agreement.

8.05. Term.

This Agreement shall become effective immediately and shall continue in force and effect for five (5) years commencing on the date hereof and shall thereafter continue until termination by either of the parties hereto giving the other at least six (6) months written notice of its intention to do so.

8.06. No Joint Ownership

No provision of the Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or create any other rights or liabilities except as expressly set forth herein.

8.07. Severability

Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then continue in full force as if such illegal or invalid provision had not been contained herein.

8.08. Successors and Assigns

Except as set forth in Section 8.04, all the covenants contained in this Agreement shall extend to and bind the respective successors and assigns of the parties hereto with the same effect as if the words "successors and assigns" had in each case, been specifically mentioned.

8.09. Waiver

The failure of a party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights herein granted.

ARTICLE 9

9.01. Addendum

Notwithstanding anything herein contained to the contrary, it is further understood and agreed that the Addendum attached hereto is hereby incorporated by reference as though fully set forth herein.

IN WITNESS WHEREOF, The City of Philadelphia has caused this Agreement to be executed by its Water Commissioner pursuant to an Ordinance and the appropriate officers of Municipality, Township or Authority have executed this Agreement on behalf of the Municipality, Township or Authority, and have hereunto affixed the corporate seal of the said Municipality, Township or Authority duly attested by the appropriate officer thereof, the day and year first above written.

CITY OF PHILADELPHIA

By:
Water Commissioner

Attest:

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Attest:

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SECTION 2. The City Solicitor is authorized to include such items and conditions in said Agreements as he deems necessary or desirable to protect the City's interest.

SECTION 3. All ordinances and regulations enacted prior to the effective date of this ordinance, and regulating the receipt, conveyance, treatment and disposal of wastewater and its by-products to users outside the limits of the City, are repealed insofar as they are inconsistent with any provisions of this ordinance.

CERTIFICATION: This is a true and correct copy of
the original Ordinance approved by the Mayor on

NOV 5 1979

Charles H. Sawyer Jr

Chief Clerk of the Council